

Asylum and Immigration Tribunal

AY [Political parties – SCP – risk] Sudan CG [2008] UKAIT 00050

THE IMMIGRATION ACTS

**Heard at Field House
On 18 & 19 February 2008**

Before

**SENIOR IMMIGRATION JUDGE LATTER
SENIOR IMMIGRATION JUDGE SOUTHERN
MR C THURSBY**

Between

AY

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Jafar of Counsel instructed by Miles Hutchison & Lithgow,
Solicitors
For the Respondent: Mr J Wright, Home Office Presenting Officer

DETERMINATION AND REASONS

1. *Opposition parties are allowed to function within relatively narrow parameters in Sudan*
2. *The Sudanese authorities do not seek or even attempt to take action which could amount to persecution against all political opponents but in the main they seek to control by the use of fear and intimidation. Depending on the particular circumstances of an individual, they may resort to stronger measures, particularly against those actively engaged in building up grass roots democracy, working in support of human rights and involved in open criticism of the regime's core ideology and philosophy.*
3. *In general it will be difficult for ordinary members and supporters of the SCP or any other political party to establish a claim for asylum. They will need to show that they have been engaged in specific activities likely to bring them to the attention of the adverse authorities such as active and effective local democratic activity or support for particular human rights activities. Whether any individual*

political activist is at risk will necessarily depend upon his individual circumstances set within the context of the situation as at the date of decision. This will include an assessment of the nature of the activities carried out and how they will be seen by the authorities.

4. The legal status of an opposition party has no significant bearing in itself on whether an individual is likely to be at risk of persecution. Political activities also take place under the guise of cultural associations

1. The appellant is a citizen of Sudan born in March 1968. He arrived in this country on 17 November 1995 and claimed asylum. His application was refused on third country grounds and his appeal against that decision was dismissed by a Special Adjudicator. In May 1998 the appellant through his solicitors asked for his application to be considered substantively. The appellant was interviewed in November 1998 but no decision was made on his application until 11 August 2004 when it was refused. On 17 August 2004 the appellant was refused leave to enter and the respondent decided to remove him to Sudan.
2. The appellant's appeal against that decision was dismissed by an Adjudicator, Mr E A S Lucas, following a hearing at Taylor House on 25 November and 20 December 2004. The appellant was granted an order for reconsideration and on 10 November 2006 the Tribunal (Senior Immigration Judge Gleeson, Mr H G Jones, MBE JP, Sir Jeffrey James KBE, CMG) held that the Adjudicator had materially erred in law. Its reasons were as follows:
 1. The appellant has been granted review of the determination of Immigration Judge Lucas, who dismissed his appeal against the Secretary of State's decision to refuse to grant him asylum and to set removal directions to Sudan, his country of origin.
 2. Reconsideration was granted by Senior Immigration Judge Mensah, who considered that the grounds of appeal raised arguable issues regarding the nature and adequacy of the reasoning in the determination and risk on return as a draft evader. Reconsideration was granted on 27 June 2005.
 3. At the error of law hearing, Mr A Jafar of Counsel (instructed by Miles Hutchinson and Lithgow) appeared for the appellant. Ms O Awosanya, Home Office Presenting Officer, represented the Secretary of State.
 4. Mr Jafar produced a very helpful (albeit late) skeleton argument setting out the basis upon which it was asserted that there was a material error of law. He indicated that questions of evasion of military service were no longer to be pursued.
 5. Two significant errors of fact and law emerged: the first, that the Immigration Judge had been misled by the absence of documents, in the possession of the respondent, which now showed that when first entering the United Kingdom, the appellant, in his asylum application pro forma referral document clearly set out the basis of the asylum claim as now posited. Accordingly, the Immigration Judge's finding that the appellant made "no mention of his fears on asylum grounds" on entry is factually wrong and sufficiently significant on its own to be material.

6. The second issue is that insufficient consideration was given to a robustly worded medical report, which states (bottom of page 4), "his many lesions, and their site, strongly corroborate his story". Realistic causation was given, but having already formed a view on credibility, the Immigration Judge had erred in law by considering the medical report in the light of those credibility findings, rather than using the medical report to help him reach credibility findings. Failing to reach credibility findings on the whole of the evidence before the Immigration Judge is certainly a material error of law.
7. For the Secretary of State, Ms Awosanya accepted that the reasoning of the Immigration Judge was inadequate, in particular, at paragraph 16 - 18 of the determination, and the appeal therefore proceeds to second stage reconsideration with the concurrence of both Counsel.
8. In fact, the appeal has some interesting features, and in particular, there is no current authority on the risk to members of the Sudanese Communist Party in the changed situation in Sudan, and it may be that this appeal is appropriate for a country guidance decision.
9. The appeal was therefore set down for reconsideration by a legal panel at Field House (such panel not to include Immigration Judge Lucas).
10. The following are the questions for consideration by the Tribunal at the adjourned hearing –
 - (a) Whether the appellant's account is credible;
 - (b) The weight to be given to the failure to claim in France and travelling on a false passport, having regard to section 8 of the [Asylum and Immigration (Treatment of Claimants, etc.) Act];
 - (c) Whether on the facts and in particular having regard to the medical report, the appellant has proved past persecution, and if so for what reason;
 - (d) Whether having regard to the Geneva Convention, the Qualifications Directive Regulations 2006 and the Immigration Rules HC 395 (as amended), the appellant is entitled either to refugee status or humanitarian protection; and
 - (e) The risk on return to Sudan to those known to be former adherents of the Sudan Communist Party."
3. The case was identified as suitable for listing as a country guidance case. On 26 November 2007 the hearing was adjourned and the following directions were made:

"The parties should note that (as advised at the hearing on 26 November 2007) the country guidance issues have been widened to include the following:

'The legal status of opposition parties (including the Sudanese Communist Party) in Sudan; how the legal status of a party is relevant to the ability of the party in question to operate in Sudan; and how the legal status of a party affects the risk which an individual member or activist faces on return to Sudan.'

If the appellant wishes to rely on the addendum report dated 15 November 2007 from Mr Verney, then he is on notice that a report from Ms Gillian Lusk should be submitted giving full details of the matters summarised by Mr Verney at paragraphs 2-5 of his

addendum report. Ms Lusk's report should explain, inter alia, when she saw the files, the circumstances in which she saw them and what the files consisted of. Consideration should also be given to requesting Ms Lusk to give oral evidence. [This direction was made on the respondent's application as Mr Verney said in his addendum report that the files had been seen by Ms Lusk].

If the appellant wishes to rely on article 8, then an up to date witness statement should be submitted."

4. At the hearing before us it was agreed that this was to be a full rehearing of the appeal.

Background

5. The appellant arrived in this country on 18 November 1995 travelling by Eurostar from Paris to Waterloo. He claimed asylum after he was refused leave to enter. It is now accepted that he claimed under a false name and had travelled with a false travel document. He said that he left Port Sudan by cargo ship on 23 September 1995 and travelled directly to France where he had stayed for two days. The basis of his claim was that he had a political problem in Sudan which started after he became involved with the Communist Party which he had joined in 1988. He went to a lot of meetings. After the present Islamic military dictatorship came to power he took part in anti-government activities such as distributing pamphlets and writing slogans. He was arrested and detained in 1992 for two months. He was burnt on his arms and his legs were badly beaten. He was forced to stand for sixteen hours a day. His father was summoned and both he and his father were forced to sign an undertaking that the appellant would not get involved in any more political activities. The appellant was imprisoned again on 3 May 1995 and held until 20 September 1995.
6. His application for asylum was refused on third country grounds on the basis that he was returnable to France where his application would be properly considered by the French authorities in accordance with the provisions of the Refugee Convention. At the hearing of his appeal the appellant continued to use a false name. His appeal was dismissed but the appellant was not removed to France. He went into hiding. He then instructed solicitors in May 1998 who renewed his application asking for it to be determined on a substantive basis.
7. In his interview the appellant said that he had been detained on two occasions, the first being in October 1992 for two months. He had been questioned and subjected to torture and beatings. He was burned on his hand with a heated metal bar and also on his arms and legs. He said that political leaflets had been found at his home when he was arrested. He was questioned about where he got them from, who gave them to him, the way they were distributed and who was with him. He was released after being forced to sign a declaration with his father that he would never return to political activities or hand out political leaflets. His father was not detained but he had been threatened.
8. His next arrest was on 3 May 1995 and he was held until 20 September 1995. He was detained outside Khartoum but he could not identify the location any further because he had been blindfolded when taken there. During this detention he was again tortured and beaten. He had been able to escape; he had been planning this for a long time. The guards used to make them stand outside for long periods and

when the guards were changing, they (the appellant and another prisoner) took their chance and climbed over the wall. They reached a road, were picked up by a lorry and then went to Port Sudan. Through one of his relatives he got in touch with his father and obtained some money. He was able to plan his escape to France and then on to this country.

9. The appellant said that he had been qualified to go to university but had lost his chance in 1992 because the admissions office asked for a conduct certificate which he could not provide. He had not been charged with any offence. He had been able to get into the port at Port Sudan as an employee. He had a forged Eritrean passport obtained through a relative in Port Sudan. The journey by ship had lasted until 23 September 1995. When they arrived off the coast of France, he was told to get into a small boat and he was taken ashore. He was then directed to a Sudanese man and was able to get a passport to come on to London. The appellant was asked why he had not asked for asylum in France. He said that since he planned the escape he had intended to come to England because they understood what was going on in Sudan. He had heard that there was security co-operation between France and Sudan and that the French authorities were deporting anyone who applied for asylum. The appellant was asked why he had gone into hiding for more than eighteen months. He said that after the decision to remove him was issued, he had no one to talk to about his problems and if he had been sent back, it would have been the end of him.
10. The appellant supported his application with a statement dated 16 February 1999. He confirmed the details of his arrest in October 1992. He said that at about 3am one morning three members of the security services raided his home which was searched. Leaflets from the Communist Party were found and he was arrested by officers dressed in plain clothes. He was blindfolded and taken away to a car to what he now believed to be a ghost house in Khartoum. He was beaten, punched and also burnt on his hand, arms and legs with a hot iron bar leaving him badly injured and scarred. It was soon after his release that he was admitted to Omdurman Hospital where he remained for six months. He had a fever which took a long time to subside. After being discharged he tried to obtain entry to university but was unable to provide certificates to show that he had not been arrested and detained.
11. On 3 May 1995 he had been arrested again at a friend's home and taken to another ghost house. He was intensively interrogated about the meeting and the leaflets found in their possession. He was badly beaten and was given very little food or water. On occasions he was made to stand out of doors during the night. He was able to escape on 20 September 1995. Once he had arrived in Port Sudan he passed a message to his father via a third party with a request for financial assistance. His father duly provided him with money and he then made arrangements with an Eritrean smuggler who got him access on to a freight ship. The appellant produced a medical report dated 9 September 1999 which confirmed that he had scarring on his arms and legs.
12. In the reasons for refusal letter dated 11 August 2004, the respondent did not accept that the appellant was Sudanese. He noted that the he had used three different identities: one on his false French travel document, the second when he first claimed asylum and the third when he renewed his application. He had been unable to describe the principles of Communism but said that he was attracted to the

Communist Party because of its slogans and goals which included establishing a democratic state. The appellant said that he had been detained on one occasion, released and then had taken up his activities again. But following his second detention he had chosen to flee rather than remain to pursue his activities for the party. There was no evidence that his father had suffered from any problems as a result of having signed the declaration about the appellant's political activities. The medical report did not provide conclusive proof that he had been tortured. The respondent did not believe the appellant's evidence about his escape from prison and his journey to Port Sudan. He had failed to claim asylum in France.

Evidence at this Hearing

13. The appellant gave oral evidence as did the expert witnesses, Mr Peter Verney and Ms Gillian Lusk. The documentary evidence produced on behalf of the appellant comprised a subjective bundle of material (1A indexed and paginated 1-45) including a medical report from Dr Braverman, a bundle of background evidence (2A 1-165) and a bundle containing Ms Lusk's report and further background evidence (3A). During his submissions Mr Jafar produced the Report of the Fact Finding Mission to Cairo (Egypt) and Geneva (Switzerland) 2001 (4A), the Home Office asylum instructions on assessing credibility in asylum and human rights claims (5A) and further reports including Sudan Human Rights Violations Condemned (6A). Mr Jafar produced his skeleton argument for the hearing before the Adjudicator and a further skeleton argument for this hearing. We note that no further witness statement was adduced following the directions given on 26 November 2007 (see paragraph 3 above) and Mr Jafar has not pursued any argument on article 8 grounds.
14. The respondent produced a bundle of background evidence (1R paginated 1-72) together with the COIS Report, 2006, BA (Military service – no risk) Sudan CG [2006] UKAIT 0006 and HGMO (Relocation to Khartoum (Sudan)) CG [2006] UKAIT 00062, a supplementary bundle (2R paginated 1-74) and an article from Sudan Tribune dated 20 March 2007 (3R). The Tribunal drew to the parties' attention the following documents: an article from the Sudan Tribune of 16 February 2008 (T1) and the United Nations Report of the Secretary General on the Sudan of 31 January 2008 (T2).

The Evidence of the Appellant

15. In his oral evidence the appellant gave an account broadly in line with his written evidence and the account he gave in interview, which we have summarised above, all of which he adopted. But there were significant inconsistencies and contradictions that became apparent, which we examine in detail below. The appellant insisted that he would be at risk on return to Sudan both because he would be of interest to the authorities on account of his past activities and because he would continue to engage in those activities upon return.

The Evidence of Peter Verney

16. Mr Verney adopted his two reports dated 3 May 2007 (1A 22-46) and 15 November 2007 (A5). Mr Verney's background and experience is set out at 1A38-39. He is an acknowledged country expert on Sudan and gave evidence in HGMO. In his first report Mr Verney indicated he had not interviewed the appellant but had based his

report on the documents provided to him. It was his view that the appellant's account was wholly plausible and consistent with the known behaviour of the Sudanese regime towards members of the Sudanese Communist Party (SCP) in the early 1990s. He could see no reason to doubt the appellant's nationality. He said that the appellant's account of his reasons for supporting the SCP would be accurate in the context of Sudan. The SCP for all its faults had campaigned for democratic representation and provided the main democratic alternative to the Northern Sudanese Islamists and the religious conservative parties. The Islamists in the current regime, the National Islamic Front (NIF), came to power by crushing Sudan's fledgling parliamentary democracy and have a history of unprecedented violence and connivance in inflaming civil war. The SCP and their left wing associates in the trade unions were pivotal in pushing for the restoration of democracy in April 1995 and keeping the north and south peace process going during the 1980s when the Islamists were intent on damaging it.

17. It was Mr Verney's view that all left wing groups in Sudan remain as targets of the security apparatus notwithstanding the 2005 Comprehensive Peace Agreement (CPA). There was less frequent overt brutality than in the 1990s because the regime had become more sophisticated but it took little prompting to elicit a reversion to cruder tactics. Some more senior members of the left wing opposition including the SCP had reached a degree of accommodation with the regime since the CPA and could operate in public, protected to some extent from the worst excesses of the regime by their age and social prominence. They also tended to hold British or other international passports and to come from the same elitist circles as senior regime members. However, the majority of the party's grass roots members and activists had less social influence and remained vulnerable to state sanctioned brutality.
18. The SCP had participated in both of Sudan's post-independence periods of parliamentary democracy in the mid 1960s and in the mid 1980s. It was part of a left wing grouping including the Democratic Front and the Democratic Alliance which counted among its members many educated, progressively minded people whose political and cultural aspirations in European terms would merely be recorded as secular and liberal. The current regime did not differentiate between various secular and left wing groups but attacked them all. The SCP had been behind one of the most effective opposition campaigns against the current regime and this was why communists and leftists were amongst the most persecuted of the Northern Sudanese. In Mr Verney's view the current dictatorship interpreted Islam in a more intolerant and narrow way than the majority of the country's Muslim population. The present regime took power to stop Khartoum becoming a secular capital and to prevent what was seen as a conspiracy against Sharia and the attempt to abrogate it. Although a government of national unity was appointed in September 2005 following the signing of the CPA on 9 January 2005, the regime was nevertheless dominated by the same figures from the NIF which had held power since 1989.
19. The regime had created an informer society in which there were considerable pressures and inducements to encourage people to spy on one another. The security apparatus at the core of the government had a well established record of officially sanctioned brutality and the brunt of the violence was often borne by those less prominent active party members whose cases did not often get reported either in the media or by human rights organisations. The regime was not consistent in its

application of oppressive measures but varied between periods of apparent relaxation and periods of harsh repression. The precise behaviour of the Sudanese authorities towards any particular returnee was always hard to predict since it was dependent on a number of variables. Mr Verney described the regime as being now sufficiently sophisticated to avoid attracting attention to its methods and would often choose not to act in an obvious and public manner preferring instead to wait until there is less risk of adverse publicity. It was his view on the basis of the appellant's account that there was reasonable justification for him to fear persecution in Sudan. The fact that he had been abroad for a number of years without authorisation would be a factor in alerting the Sudanese authorities to him. It was his view that the appellant would be recognised on return to Khartoum because of his documents and would be unlikely to remain untroubled for long even if he was able to pass through immigration security without incident. In his supplementary statement he referred to the record-keeping activities of the Sudanese authorities. There would be every likelihood that the authorities would have a record of the appellant's detention. An individual of high value or suspicion would remain on record indefinitely. Evidence was plentiful of the ill treatment of detainees.

20. In his oral evidence Mr Verney confirmed that the SCP would have used a cell structure. In its time it had been the largest left wing party in Africa, dating back to the 1960s. He accepted that there would be a number of road blocks on a journey from Khartoum to Port Sudan. It might be possible for certain types of people to get through if they were not high profile or wanted by the authorities. Checkpoints were occasionally manned by inexperienced soldiers. Mr Verney said that in most cases a person would be asked to show a national identification card. He said also that it would not be unusual for a lorry driver to have casual labour to help him. When asked if it would be possible to complete such a journey without being asked to produce identification, Mr Verney said that he had heard of cases where that had been avoided by, for example, the passengers hiding amongst livestock being carried on the lorry.
21. The security authorities in Sudan had been trained by the East Germans and they kept very extensive records. In the early 1990s they switched from detaining people for long periods to a rapid turnover of repeated detentions. The aim was to intimidate the individual and the wider population. It was those with a lower public profile who suffered the most. Leading opposition figures would not be detained unless the government were satisfied that there was a specific need to do so. He cited as an example the UMMA leaders detained in the period up to December 2007. (See paragraph 39 below). The government had become very aware of the need to give a better impression to the outside world. The regime's view was that it knew the West better than the West knew it.
22. It was Mr Verney's view that anyone who was able to demonstrate the weaknesses of the regime would be at risk as would those who sought to undermine the way the regime expressed itself and behaved. Mere membership of a political party would not without more put someone at risk. If a person was known to be politically active and outspoken, there would be a risk. The fact an activist party may have a few MPs would be no guarantee of safety. Freedom to organise was highly constrained. It was his opinion that the CPA was on the verge of collapse and members of the

SPLM, a party to the CPA, were now complaining of the delay in implementing its provisions.

23. Mr Verney said that it was impossible to predict whether a political opponent would be arrested or not. This could depend on relatively small changes of attitude in the regime. There was an extensive network of informers. If someone was seen as a potential opponent there might well be an attempt to co-opt him. It was the substance of any political activity which would concern the authorities not the banner under which it was conducted. A number of organisations described themselves as cultural groups but they would in fact be seeking to pursue a political agenda. The government liked to give the impression of free speech and would not necessarily close down parties or activities but would seek to undercut them and deny them grass root support. Human rights activism was likely to put a person at risk. Even attempts at simple political consolidation at grassroots level could lead to an adverse response from the authorities. In the UMMA and DUP parties there was normally little challenge now to their political activities. In other parties it depended on the individual circumstances but the government tended to allow figureheads to carry out political activities until they touched on any sensitive issues. Mr Verney was invited to comment on the political parties listed in the COIR Report. He broadly categorised them into those which were front organisations, ideological opponents and opposition movements not so ideologically opposed to the government.

24. His comments can be briefly summarised as follows:

Alliance of the People's Working Forces: This party is neither a front party nor an ideological opponent. It is not a significant group.

Baa'th Party: The CIPU report is accurate. The party is strongly and ideologically opposed to the NIF.

Beja Congress (BC): This is a weakly organised party which recently signed the peace agreement. It is strongly opposed to the current regime.

Democratic Unionist Party (DUP/DUP-Mirghani): The analysis in the CIPU report is correct. It covers a broad spectrum of political views including both left and right. As such it cannot be given a specific political flavour. The government treats it with a certain degree of contempt.

Democratic Unionist Party (DUP/DUP-Hindi): This is a splinter group from the DUP which has returned to pro-government views. It would not do anything to upset the current regime.

Free Sudanese National Party (FSNP): A Nubian party which has supported a more pro-African policy. It is antagonistic towards the government. Its leader Phillip Ghabbush died recently.

Independent Democrats, Islamic Christian Solidarity, Islamic Revival Movement, Islamic Socialist Party: None of these parties are of any size or significance. Mr Verney would not expect them to be ideologically opposed to the present government.

Islamic Ummah Party: This is a splinter group from the UMMA Party which has allied itself with the government.

Justice and Equality Movement (JEM): A Darfurian-based party which is far less obsessive than the current regime about the pursuit of Islamic ideology. It would be seen as an ideological threat.

Justice Party: This party has worked with the regime and would not be regarded as political opponents.

KOrbaj, Moderate Trend Party: Mr Verney knows nothing about these parties.

National Democratic Party: Mr Verney has heard of this party but has no information about its current state.

National Movement for Reconstruction/Reform and Development: This is a splinter group from the JEM and is regarded as a stooge of the government.

Nile Valley Conference, Popular Masses' Alliance: Mr Verney does not know about these parties.

Popular National Congress Party (PNC/PC): Its founder Hassan Al-Turabi had been ideologically behind the current regime but there was a split in a power struggle in the 1990s. It was now difficult to characterise this party's relationship with the regime. The PNC was less Arabising and generally less racist than the current regime which found it useful to cast Al-Turabi as an opposition leader. Depending on the political climate it could be regarded by the regime as a serious opponent.

Al-Shahamah, Social Popular Party, Sudanese Central Movement: Mr Verney had no information on these parties save that they were very small.

Sudanese Communist Party (SCP): This is clearly regarded as a significant opponent of the current regime. It had support from both the North and South Sudanese and has been opposed to the religious basis of sectarian parties.

Sudanese Green Party: The government has clamped down on its activities. Members could be at real risk.

Sudanese Initiative Party: Nothing known.

Sudanese Liberation Movement (/Army) SLM(/A): This party is intrinsically opposed to the current government.

Sudanese National Movement for the Eradication of Marginalisation: Mr Verney had no information about this group and thought that it might be a splinter group in Darfur.

Sudan Peoples Liberation Movement/Army (SPLM/A or SPLM-Mainstream): This party is intrinsically opposed to the current regime but signed the CPA in January 2005.

South Sudan Independence Movement/Army: The leadership of this group had signed up to an agreement with the authorities but that had now fallen apart. It had tried to mend its fences with the SPLM. It would normally be regarded as an ideological opponent but the regime was attempting to co-opt individual members. This was an example of the way the current regime sought to divide other groups. The leadership of this party had been bought off in the past.

Sudanese National Party (SNP): A Nubian mountain party which at times worked in partnership with the FSNP. It was ideologically opposed to the present government.

UMMA (UP/mainstream UP): This was a mainstream party which had played a significant role in opposition activities in the 1990s but had no clear manifesto. It was opposed to the government but not ideologically.

UMMU Party (Registered): This could probably be regarded as a front party.

South Sudan Defence Force/United Democratic Salvation Front: Mr Verney regarded these as ploys to divide the rebels and were probably fronts.

National Democratic Alliance (NDA): Mr Verney regarded its current existence as debatable. It was always a loose collection of parties and was a nebulous organisation which was difficult to describe.

Legitimate Command: This was formed of secular military officers and was opposed to the government.

Sudan Alliance Forces: This had merged with the SPLA and was an opponent of the government.

Sudan Federal Democratic Alliance: This party was primarily concerned with Darfur and was ideologically opposed to the government.

25. Mr Verney confirmed that in his view the risk to any individual would depend in part on the political climate at the time. The government sometimes took little action but would then clamp down. It would be concerned about grass root democratic activities, involvement in human rights issues and criticism of the different internal conflicts in Sudan.
26. In cross examination he said that activities for the BC were likely to lead to adverse interest. The SNP and FSNP were Nuba mountain parties and activists would be at risk. Members of the JEM had been subject to detention and imprisonment. The ideological approach of the PNC was similar to the present government but was more internationalist and less racist. However, because of the ideological closeness, the disputes could be fratricidal at times. So far as the SCP was concerned, it was his view that its members had been at risk but there had been different waves and phases of risk since 1979. The government would sometimes follow charm campaigns and then revert to type. He accepted that the SCP newspaper, Al-Madan, was now being published again. By permitting it to be published, the government was seeking to present itself in a better light abroad.

27. So far as its relationship with the SPLM was concerned, the Sudanese government had missed many of the key stages in implementing the peace agreement. The treatment of Southern Sudanese in Khartoum had been brutal. He accepted that mere membership of a political party would not put a person at risk and that distributing pamphlets would not necessarily give rise to a real risk. Someone who merely distributed pamphlets may well be of no interest to the authorities but such activity could indicate a depth of active political involvement which would concern the authorities. He would not underestimate the consequences of distributing leaflets. He repeated that the regime worked to give an impression of political freedom but would then claw back and revert to type.
28. The problem facing the authorities was that if the peace agreement was fully carried out and there were democratic elections, it would inevitably lose power. Some activities would be tolerated. The regime aimed to keep people guessing and to maintain a climate of fear of potential consequences. He described the political atmosphere in Sudan as veering between Kafka and Alice in Wonderland. Mr Verney gave as an example the requirement to obtain a permit for a musical gathering but then, even if all the legal requirements had been completed, the security police might well still turn up and arrest those involved. He accepted that some degree of political activity was tolerated by the authorities "within red lines", a reference to a phrase used by the Sudanese President. Activities would be permitted within these lines but they were moved to accord with the political climate at the time. A degree of political activity was permitted. The authorities were happy to allow the elite leadership of political parties to carry on, particularly where their power base had been reduced.

The Evidence of Gillian Lusk

29. Ms Lusk is a freelance journalist and writer on Sudan. She lived and worked in Sudan from 1975-1987 and was deputy editor of Africa Confidential from 1987-2006. In her report dated 11 February 2008 (3A) Ms Lusk referred to the fact there was a long history of a vast and effective security service in Sudan. There was a ready supply of people to spy on their neighbours. Information was collected for use in putting pressure on those deemed to be political opponents. She referred to her own file which was shown to her when she initially applied for an exit visa in 1987. Since taking power the NIF had used the security apparatus as a major instrument of policy implementation. They did not simply use internal, external and military security but there were many other departments often established as business companies or charities which were fronts for covert government activity. She referred to the arrest of three human rights activists working for the Sudan Organisation against Torture, SOAT. All three were linked to the SCP.
30. In her oral evidence Ms Lusk said that the Sudanese government had tried to give the impression of opening up and allowing things to happen. The SCP leader had returned to the country but everyone knew that there were lines beyond which they could not go. Often it was rank and file members and activists who were at risk. The whole situation was unpredictable: the red lines would not be clear. There were no clear guarantees of what you could do.
31. In cross examination she confirmed that she had last been in Sudan in 1987 but she worked on Sudan on a daily basis and continued to have diverse contacts. Active

opposition to the government would be considered dangerous. Opposition in the country to the government was total but it was not active. The current regime had initially infiltrated the system and had their people in place when they took over power in 1989. The security forces would be interested in anyone who might be a threat. Information was collected on those who were a direct threat. The intention was also to discourage others. She described the government's activities in permitting newspapers to be published and opposition politicians to function as political finessing.

32. The government was using delaying tactics to put off bringing the CPA into effect but it was under pressure to allow democratisation particularly from the USA. It had had to make concessions but it knew that if there were democratic elections, it would lose power. It was her view that an activist opponent would be at risk. Whether any particular individual would be at risk would depend upon the security official involved and the policy being pursued at the time. Much would depend on how someone was perceived. She was not able to give any examples of arrests specifically for distributing leaflets but there was an atmosphere of continuous harassment and repeated arrests. People in Sudan would be arrested for matters which would be regarded as normal in the west.

Submissions

33. Mr Wright submitted that the appellant was not a credible witness. There were discrepancies in his evidence about when he was detained and for how long. His evidence did not show that in reality he had any political motivation. He had not taken part in political activities since arriving in this country. His evidence on the way the SCP and in particular the cell structure operated was inconsistent and vague. He said that he had carried on his activities in secrecy but failed to explain how in these circumstances he could return to such operations following his arrest. The medical report had been provided by a doctor who was not said to be qualified in assessing whether wounds were evidence of torture. The appellant had made his claim in false names after arrival in this country. On his own account his father had been required to sign an undertaking as to his behaviour but there was no evidence that any action had been taken against him. The appellant's account of his detention and escape was implausible and untrue. He had travelled to France but had failed to make a claim there.
34. So far as the background evidence was concerned, Mr Wright submitted that the starting point should be HGMO. The evidence of Mr Verney should be approached with caution as he had failed to deal with a number of important reports such as the Danish Report (4A). He had clearly not been aware of the contents of that report. The evidence showed that the SCP was represented in the current Parliament in Sudan. Its leader appeared to operate freely. The party newspaper was being published. The reality appeared to be that members of the party could carry on some political activities. The risk to those opposed to the Sudanese authorities needed to be assessed in the light of the evidence about the number of political detainees: 100 according to the US State Department Report (2A77) or 330 according to the 10th COI Seminar 2005 (R2/53). The evidence did not support a finding that relatively low level members would be at risk for that reason alone. Those who had been working for SOAT had been activists. The evidence had to be looked at as a whole to assess whether an appellant in his particular circumstances would in fact be at real risk.

35. Mr Jafar submitted that the appellant's evidence was consistent with the background evidence. He had been unable to go to university because of his detention. There was no reason why the party should not allow him to re-engage in his activities following his release from his first detention. His account was consistent with the regime's policy of repeated detention for some individuals. There were inconsistencies in the evidence but it had to be kept in mind that the appellant was now describing events which had taken place 13-14 years ago. His evidence was strongly corroborated by the medical evidence from Dr Braverman which described his injuries as highly consistent with his account.
36. He argued that an adverse inference should not be drawn from the fact that the appellant had not given evidence about his father suffering any adverse consequences. His conversations with his family had been muted and relatively short. There was no reason why the appellant's account of his escape and trip by lorry to Port Sudan should not be true. Mr Verney had confirmed that it would not be unusual to have workers assisting a lorry driver. There was evidence to support the fact that torture took place in ghost houses. The appellant had given detailed evidence about the cell structure of the party. His account was internally consistent and had to be assessed against a chaotic state of affairs in Sudan which Mr Verney had described as veering between Kafka and Alice in Wonderland. The appellant had identical burns on both his arms which showed an intentional use of violence against him. The appellant had not given his true identity on arrival but his anxiety was to reach a place of safety. He had not claimed asylum in France because he feared that he would be returned to Sudan.
37. Mr Jafar submitted that the assessment of risk for any particular individual should take into account a number of factors and in particular whether he was a member of a political party, his political associations, his student activities and any previous detentions. The reality was that if someone was known or perceived to be opposed to the government, there was a real risk of persecution. There were certain types of activity, such as taking part in human rights activities, drawing attention to the failings of the governing party and criticising internal conflicts which would inevitably lead to a risk of persecution. No proper distinction could be drawn between high level and low level activists. The risk depended upon an appellant's particular circumstances. The current regime was determined to hold on to power and although it permitted some political activities by opposition groups to appease international opinion, the reality was it continuously worked to deprive opposition parties of any real support.

The Law

38. We remind ourselves that the appellant would be entitled to asylum if owing to a well-founded fear of persecution for a Convention reason he is outside Sudan and is unable or owing to such fear is unwilling to avail himself of the protection of that country. The burden is on him to show there is a reasonable degree of likelihood of persecution for a Convention reason if returned there. This standard can also be expressed as whether there is a real risk of persecution. A similar standard applies to whether the appellant is entitled to humanitarian protection or is at risk of serious harm contrary to article 3. We also take into account the provisions of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 which together with amended Immigration Rules have brought into effect in domestic law the provisions of Directive 2004/83/EC (the Qualification Directive).

The Current situation in Sudan

39. We take as our starting point the summary of the background situation set out in paragraphs 110-117 of HGMO:

“110. We do not propose to summarise all of the background evidence before us, particularly as our coverage of the expert evidence refers to significant aspects of this. However, we shall highlight parts of it which have a particular bearing on the issues we have to decide. The April 2006 COIS Report on Sudan affords a convenient reference point for much of what we say here, by virtue of its extensive sourcing.

111. Sudan’s population is variously estimated as being between 32 and 39 million. Sudan is the biggest country in Africa. With an area of 2.5 million square kilometres, it is as large as Austria, Italy, Germany, France, Spain, Portugal, the UK and Sweden together. The distance between Khartoum and the nearest borders of Darfur is over 600km. Sudan’s population encompasses a wide diversity of tribes (500 African and Arab), cultures, languages and religions, one of the principal religions in the South being Christianity. In rough percentages Sudan’s population is said to consist of 50% black Africans, 40% Arabs, 6% Beja and 3-4% others. It has experienced more than 30 years of internal armed conflicts, but current divisions date back to colonial times when different policies were applied to the North and to the South. Darfur was an independent sultanate which became part of Sudan only in 1917. Even though a peace agreement was signed in January 2005 ending more than 30 years of armed conflicts in the South, there remains armed conflict in Darfur, as well as in eastern Sudan. Both sides of the conflict in Darfur are Muslims.

112. The aim of the so called “Salvation Revolution” which brought the current regime to power in the 1989 coup was the islamization of Sudanese society. The current government of Sudan has a strong security and military dimension. The national security force and the military intelligence service are considered to be the most efficient organisations in Sudan. Both entities, more or less, control the country. Since its independence in 1956, Sudan has gone through a militarization process. The agricultural and industrial sectors of the economy are dominated by the military. The December 2005 ACCORD report states that according to staff members of the Sudanese Ministry of Defence and the Ministry of Finance, 80% of the budget for 2003 and 2004 was spent on the military. The Sudanese army, including Popular Defence Force militia and Borders Intelligence, as well as air force and navy, numbers approximately 200,000 (COIS April 2006 5.82). The current leadership is trying to establish Sudan as the dominant military and political power within the Arab region or at least among the North African countries, second to Egypt.

113. The human rights situation in Sudan has been described as extremely poor: there is a broad range of violations of human rights including arbitrary arrests, disappearance cases, executions and torture occurring in Sudan. Censorship of the press has increased since the signing of the peace agreement. The number of arbitrary arrests and people tried for political reasons has doubled from January 2004 to January 2005. Under the 1999 National Security Act, which is still being implemented, the security apparatus has impunity and is free to detain persons arbitrarily without arrest warrants. This Act allows detention without trial and judicial review for 30 days which can be extended three times. In practice, detention can be extended indefinitely. Many detainees are held incommunicado and are not given access to lawyers. Family members are not informed about their status. Many people are detained under emergency law, especially when there are political implications. Moreover, the judicial system is heavily overloaded. The safeguards of the Criminal Procedures Act are often

not implemented simply because courts cannot cope with the number of cases. Lawyers face difficulties and also there is no real independence of the judiciary.

114 The conditions in prison are extremely harsh and are marked by overcrowding, lack of exercise and terrible sanitary conditions. Many detainees become ill in detention and some die as a result of lack of treatment.

115. Torture is routine and widespread. Many detainees, both persons detained for political reasons and persons suspected of having committed ordinary crimes, are affected. The real number of people who are being tortured is unknown, but it may reach into thousands every year. There are a number of recorded deaths in custody as a result of torture, and even after release from the results of torture. In case of ill-treatment by security officials, there is no complaint mechanism. Whilst disappearances are not seen as taking place on a large scale, many people disappear every year.

116. Members of opposition parties or movements have experienced persecution in the past and whilst in 2005-2006 there have been some improvements in their position, the regime still imprisons them from time and time.

117. Members of civil society and human rights defenders are under surveillance and might be arbitrarily arrested and detained. Depending on the charges, their status and the location, they may then also be subjected to torture.”

It would also be helpful to set out what the Tribunal said about political activists at para 271:

“271. We have already noted in a number of places evidence showing that persons in Sudan who have been involved with opposition political parties or movements or who have identified themselves as anti-government by speaking out against the authorities would be at greater risk as a result of surveillance than ordinary returnees. Although the extent to which the regime cracks down on oppositionists appears to fluctuate, we think it safe to infer that those who have been activists involved with opposition parties or movements or who have spoken out against the government continue to constitute a current risk category (we deal separately below with persons who rely on sur place activities).”

and its conclusions on risk at para 309(8)(ii):

“309(8)(ii). However, persons whose conduct marks them out as oppositionist or anti-government activists remain a current risk category. Persons in this category may include some (but certainly not all) students, merchants/traders, lawyers, journalists, trade unionists, teachers and intellectuals. Such conduct may take the form of being a political opponent of the government or of speaking out against the government. It may also take the form of being a member of a student organisation that is allied to an opposition party or that is opposed to the government’s policies (paragraphs 271-283).”

40. There is nothing in the subsequent background evidence to provide any real support for an argument that the Sudanese government’s human right’s record has improved. The US Country Report on Human Rights Practices 2006 released in March 2007 (2A111 at 112) says:

“The government’s human rights records remained poor, and there were numerous serious problems, including evidence of continuing genocide in Darfur, for which the

government and the Janjaweed continue to bear responsibility. Abuses continued: abridgement of citizens' rights to change their government: extradition and other unlawful killings by government forces and other government aligned groups throughout the country; torture, beatings, rape and other cruel, inhuman or punishment by security forces; harsh prison conditions; arbitrary arrest and detention, including incommunicado detention of suspected government opponents, and prolonged pre-trial detention; executive interference with the judiciary and denial of due process; forced conscription of underage men, obstruction of the delivery of humanitarian assistance; infringement on citizens' rights to privacy, freedom of press, assembly, association, religion and movement; the harassment of internally displaced persons (IDPs) and of local and international human rights humanitarian organisations; violence and discrimination against women, including the practice of female genital mutilation (FGM); child abuse, including sexual violence and recruitment of child soldiers, particularly in Darfur; trafficking persons, discrimination and violence against ethnic minorities; denial of workers rights; and forced labour, including child labour, by security forces and both aligned and non-aligned militias in Southern Sudan and Darfur".

This report also confirms that there are continuing allegations that the government was responsible for politically motivated killings and disappearances including those of persons suspected of supporting rebels especially in Darfur (113-4). It records that government security forces continue to torture, beat and harass suspected political opponents and others. When dealing with political prisoners and detainees, (119) the report says: "there were no reports of political prisoners; however, the government held an estimated 100 political detainees including members of opposition parties. Security forces reportedly detained without charge, tortured and held incommunicado political opponents". It refers (119) to the fact that in September 2006 the government detained several leaders of the opposition UMMA Party for planned protests against government-backed increases for the price of sugar and fuel and security forces detained members of the PNC but adds that there had been fewer detentions than in previous years.

41. In the respondent's Operational Guidance Note issued on 5 June 2007 (1R 29-51) it is said that the Sudanese government's human rights record remained poor in 2006 and that there were breaches of international humanitarian law and gross and systematic violations of human rights. The report says that so far as members of the BC are concerned, the peace agreement in October 2006 followed by the observance of the ceasefire means that it is not likely that any level of BC members are now at real risk of persecution (3.6.9). Similarly in light of the CPA, affiliates of the SPLM/A are now not likely to be at risk (3.7.1.5) in contrast with members or associates of the SLM/A or JEM where there is a strong likelihood that leading members, prominent figures and those with significant involvement in the organisations and affiliated persons considered by the authorities to be intellectual would be subject to such treatment (3.7.2.9).
42. We were also referred to the Danish Report 2001 (1A36) and in particular to the comments of the Secretary at the Dutch Embassy (47) that the fact that a person was a member of an opposition party was not in itself a problem but if someone was an active member and spoke openly about his political association then he could be at risk of persecution by the authorities. It was his view that those members of opposition parties who, for example, distributed pamphlets were hardly at risk of being targeted but it was the more prominent members of the opposition who risked

harassment and abuse from the authorities. The report also recorded the view of a member of the German Embassy (48) that it was only high profile members of the opposition behind activities which the authorities feared who were at risk of arrest and imprisonment and that ordinary members of the opposition parties were not usually imprisoned although there had been occasionally instances of SCP and PMC party members being imprisoned. He added that generally care should be exercised in examining asylum applications where there were substantial political grounds such as membership of the SCP, the two Ba'ath parties, the DUP and possibly other parties.

43. The same report (41) records the view of someone identified as a well informed local source in Cairo that the authorities made particular use of a number of pieces of legislation to restrict the activities of the opposition or suspected members of the opposition in the country. They would be detained from morning until night and prevented from carrying out their daily activities. They would also be detained for periods of a few days to a few weeks and would often risk being subjected to beatings, isolation, threats, humiliation, frequent interrogations and being forced to carry out hard physical exercise. A person accused of substantial political activities, particularly for the armed sector of the opposition, was in a significantly worse position and violence against such detainees was also much more serious. Many inmates were subjected to serious torture in the form of electric shocks (mainly of the genitals), branding or being prevented from sleeping. Generally a person who was suspected of carrying out political activities for the opposition would automatically be regarded as a security risk and his case would therefore be a matter for the security services. Although both the appellant and the respondent placed considerable reliance on the Danish Report, it is part of the background evidence taken into account by the Tribunal in HGMO and on the basis of this report alone there is no basis for a revision of the guidance given in that appeal.
44. It is, however, clear from the evidence before us that the Sudanese authorities do currently allow some political activities by opposition parties. There is a report of the SCP leader re-emerging in 2005 after a decade in hiding (1R 1-3). He was interviewed in June 2007 by the Sudan Tribune where he refers to the party working on regaining its strength and to regional conferences in many cities around Sudan (1R 8-17). It was reported in the Sudan Tribune that in December 2007 that a prominent member of the SCP had met with the ruling NCP to discuss the implementation of the CPA and more generally about building a national consensus among major political forces towards democracy (2R38-40). There is evidence that the party reissued its paper, Al Midan, in 2006 (2R 33). It was closed after the 1989 coup but was published underground during the last sixteen years: (1R7). We must also note the report in Reuters dated 28 August 2007 that 15,000 copies of this newspaper were confiscated by the authorities (1R 25-8).
45. We also take into account the Tenth COI Seminar 2005 (2R 41-74) that torture is still routine and widespread in Sudan. Many detainees, both persons detained for political reasons and persons suspected of having committed ordinary crimes, are affected. The real number of people who are being tortured is said to be unknown, but might go into thousands every year. There are a number of recorded deaths in custody as a result of torture and even after release from the results of torture. This report also confirmed that leading members of the established Khartoum based

political movements were not being imprisoned at that time, although this might just be a temporary phenomenon as, for example, in the past the leader of the PNC had been released from detention but arrested again after rumours of a coup were fabricated. It also reports that middle and low level opposition operatives, however, were at high risk of being persecuted.

Our Assessment of the Current Situation in Sudan

46. It is against this background that we turn to our assessment of the evidence of Mr Verney and Ms Lusk. According to their evidence, the general position is clear: the current regime has been committed to the Islamisation of Sudanese society and has been exceptionally hostile towards opposition activities. However, international pressure has been put on the regime and some activities are now being tolerated within what are described as “red lines” of permitted activity with participants knowing that they must not step over them. The government, as a result of international pressure, has reached a peace agreement with the Southern Sudanese and entered into a power sharing protocol but the implementation of the peace process is behind schedule and according to Mr Verney the current regime is inevitably seeking to delay full implementation as this would lead to democratisation and to the regime losing power. The CPA which was signed to resolve the North-South conflict included the signing of the Interim National Constitution (INC) in July 2005. This contains significant guarantees of civil rights against arbitrary arrest and detention and provides for political and press freedom. However, as yet there is no final draft of the INC and its provisions have not been translated into national legislation. The rights guaranteed have not been given effect and although the Sudanese Government has sought to give the impression of some political liberalisation, this is only as a result of external pressure on the regime.
47. We accept Mr Verney’s overall analysis of the current situation in Sudan. It is clear from his evidence that both for personal and humanitarian reasons he regards the current regime with contempt but we find that this does not seriously detract from his assessment in objective terms of the current situation. The regime is caught between the conflicting aims of holding on to power and the need to respond to international pressure to bring to an end the genocidal conflicts which have been taking place in Sudan. We accept that the tacit permission for opposition parties to function has been forced on the regime and is to give an appearance of democracy which only exists within relatively narrow boundaries. We agree with Mr Verney’s analysis that activities which seek to undermine the rationale of the regime and its core policies, activities in support of human rights and attempts to gain and consolidate an effective power base for any opposition parties are capable of leading to adverse interest from the authorities.
48. Mr Verney accepted that membership alone of a political party would not without more give rise to a real risk of persecution and that a distinction could properly be drawn between people who merely distributed pamphlets, who may not be of interest to the authorities, and situations where the distribution of pamphlets might indicate a real political commitment to opposition activities, which would give the authorities cause for concern. He made it clear that there were no hard and fast lines which could be drawn. The situation in Sudan fluctuates. At times the authorities will tolerate activities, at other times they would take action.

49. The general background is one of intimidation by a repressive regime. We accept that files would be kept on those of interest to the authorities. Ms Lusk, although not Sudanese, had a file kept on her while she was working in Sudan. It is a mark of a repressive regime to maintain such files assiduously so that they can be used where necessary to provide evidence against those seen as opponents and more generally to create an atmosphere of intimidation. We agree, as Mr Verney said, that the aim is to keep people guessing and to maintain a climate of fear of potential consequences. In the light of the way that the reaction of the Sudanese authorities to opposition political activity fluctuates in accordance with political priorities and objectives at any given time including the need to respond to international pressure, it is impossible to give any hard and fast guidelines in circumstances where the government for political reasons sometimes takes no action and permits a degree of political activity to take place.
50. In summary we endorse the general guidance given in HGMO set out in paras 271 and 309(8)(ii) but so far as claims based on political opinion and activities are concerned we would add to that guidance in the light of the further evidence we have heard as follows. The assessment of asylum claims based on opposition political activities must be set in the context of a government which has been responsible for serious abuses of human rights and which has persecuted political opponents. However, at present, opposition parties are allowed to function even if within relatively narrow parameters. This is evidenced by the fact that the SCP leader has returned to Sudan and is taking part in political activities. The party newspaper is being published and the party has members in the Sudanese Parliament. It is not necessarily high profile political leaders who are at risk, although some may be. Some are left alone to give a semblance of genuine political activity and others have some protection from the fact that they have foreign passports. The fact that an activist is involved in low or mid level political activities does not necessarily mean that he will not be at risk of persecution. However, the Sudanese authorities do not seek or even attempt to take action which could amount to persecution against all political opponents but in the main they seek to control by the use of fear and intimidation. Depending on the particular circumstances of an individual, it may well resort to stronger measures, particularly against those actively engaged in building up grass roots democracy, working in support of human rights and involved in open criticism of the regime's core ideology and philosophy.
51. Whether any individual political activist is at risk will necessarily depend upon his individual circumstances set within the context of the situation as a whole. This involves an assessment of the nature of the activities carried out and how they will be seen by the authorities. It appears that the level of risk to an individual engaged in such activities may increase along with the effectiveness of those activities. Activities for a secular party or one ideologically opposed to the current regime are more likely to lead to a real risk of persecution. There are certain well established parties such as the mainstream DUP and the UMMA Party which are less likely to challenge the state on ideological grounds but nonetheless its members can on occasions find themselves at real risk as evidenced by the fact that leaders of the UMMA party were detained in 2007.
52. It will be important to take into account whether an appellant has in the past come to the attention of the authorities, the nature of the activities involved, the number of

times he has been detained and the length of any detentions. The fact that someone has been released without charge will not necessarily indicate that there will be no further interest from the authorities. The level of past interest and treatment is the most reliable indication of how an individual will be treated if he comes to the attention of the authorities in the future.

53. In the light of the fact that the SCP is currently allowed to function in Sudan we find that it will in general be difficult for ordinary members and supporters to establish a claim for asylum but they will need to show that they have been engaged in specific activities likely to bring them to the attention of the adverse authorities such as active and effective local democratic activity or support for particular human rights activities.
54. We do not consider that the legal status of an opposition party has a significant bearing in itself on whether an individual is likely to be at risk of persecution. The determining feature is likely to be how a particular individual in the light of his previous political activities will be perceived by the authorities. Activities for a party ideologically opposed to the government are more likely to lead to a real risk but someone may also be at risk even if not active on behalf of a political party as such. Political activities also take place under the guise of cultural associations.
55. We now turn to an assessment of credibility of the appellant's evidence and whether in his particular circumstances he would be at real risk on return.

Analysis of the appellant's evidence:

56. The appellant gave an inconsistent and contradictory account of the commencement and duration of his involvement with the SCP. In his written evidence and in interview he said he joined the SCP in 1988. In oral evidence when asked "when did you become involved with the SCP?" he said "I started in 1993". He was asked if he was certain about that. He replied that he could not remember the exact date but it was at about that time. Admittedly, this was a long time ago but, if the appellant's account were true, it would be reasonable to expect him to be clear that he "started" his involvement with the SCP much earlier than 1993.
57. When this was pointed out to the appellant he sought to explain it away on the basis that, although he started distributing leaflets in 1988, his activity reached its peak in 1993. But it is hard to find any real change in the nature and extent of the activities in which the appellant claimed to have participated throughout his time in Sudan.
58. His account of his activities also lacked credibility. He said he distributed the leaflets "secretly" but in oral evidence explained that this involved going to "gatherings" or crowded areas in his own locality and handing out leaflets to strangers. When pressed on this the appellant said that he and his colleagues concentrated on distributing leaflets when there were people "gathering for something". He accepted that he would have no way of knowing whether such people included those to whom distribution would be dangerous, such as security forces personnel. This is, we find, an activity that it is impossible to consider having been carried out in secret.
59. When describing his first detention the appellant says that security forces raided his family home at night time and found leaflets from the SCP. On the basis of what is known from the background country evidence of the way in which the security

forces operate, we do not find credible that they would content themselves with taking away the appellant, then aged 22, yet show no interest in the head of the household, the appellant's father, or in any of the appellant's four siblings.

60. Even if there was some reason (which has not been put before us) to explain why only the appellant was taken away for questioning, as the appellant disclosed nothing under torture it is hard to understand why the security forces, if intent on obtaining information as to the source of the leaflets, simply failed to question those family members who might reasonably be expected to know about the appellant's associates and so on.
61. Our conclusions in this regard are reinforced by what the appellant told us of his interrogation. He said that he was asked about those with whom he was working but gave false information, such as names and addresses he had made up. Bearing in mind that he claims to have been detained for two months it seems extremely unlikely to us that the appellant would have been released before that information was followed up and found to be false or, if it was, that he was not challenged robustly about having supplied false information.
62. There is further reason to find incredible the appellant's account of him alone being questioned. He said in his first statement that "before being released I was made to sign an undertaking that both I and my father (who was not a Communist Party member) would not be involved in any political activities or hand out political leaflets. We were both threatened with our lives...". In the interview and in his oral evidence the appellant made clear that his father was required to sign such an undertaking as well. This indicates that, on the appellant's account, his father was suspected with involvement in these activities or, at the very least, that the authorities saw him as being in a position to influence and to be responsible for the appellant's future conduct. On the basis of what is known from the country evidence, it is impossible to understand why, if that were the case, his father was spared interrogation and was allowed to carry on his life and business unhindered in any respect at all, even though, on the appellant's account, the appellant was suspected of such activity and was found to have continued to engage in it despite his and his father's undertaking that he would not.
63. The appellant says that on release from this first detention he required treatment in hospital for a six month period. Yet the extent of the need for treatment described by him is burns to his arms and shoulders, weight loss, dehydration and fever. One does not need clinical medical knowledge to observe that common sense indicates that six months is a very long period to spend in hospital. There is no requirement upon the appellant to provide documentary or corroborative evidence before his account is capable of belief. But the appellant was put clearly on notice by what the respondent said in the refusal letter that his account was not accepted to be true. As the appellant has remained in contact with his father in Khartoum throughout, it is surprising that he did not ask him to obtain from the hospital confirmation of his admission and treatment or explain why such evidence was not available to him relatively easily.
64. The appellant says that he subsequently returned to his political activities. There are difficulties with this account as well. Firstly, the appellant said that he returned

to his activities “in a more vigilant way”, yet on examination of his evidence he seems to claim that he carried on in the same way as before. Indeed, when asked in evidence in what way his activities were different after his first detention from before he confirmed that his activities were the same.

65. Secondly, it is the appellant’s account that these activities were dangerous so that they had to be carried out clandestinely or in secret. It is not clear why an organisation such as the SCP, for whom secrecy is said to be essential in order to protect its members from arrest and torture, would welcome back someone who had been identified as a person suspected of anti regime political activity, detained and interrogated over a significant period and released only on the basis of an undertaking to avoid such activity in future. As we have seen, it is said that, once a person has come to the adverse attention of the regime there is a risk of repeated detentions. Those he worked with would be putting themselves at greater risk by associating with a person known to have come to the adverse attention of the authorities.
66. In any event, the appellant’s account of the steps taken to protect the identities of his comrades is not simply lacking in credibility. It is little short of fanciful. He says that the members of his cell did not know each other’s names but used code names (or, at one point in his oral evidence, code numbers) in order to identify each other. Thus, should they be arrested, they would be unable, even under torture, to disclose the identities of the others. But he said also that their meetings took place in each other’s homes. Indeed, he says that his second arrest occurred when he was at the home of a cell member holding such a meeting. Thus, it is not apparent what was achieved by the charade of using code names or numbers since the participants would be easily identifiable from their addresses.
67. The appellant said first that he was detained on the second occasion on 3rd May 1995 and held at a “ghost house” until 20th September 1995. That is a period of nearly five months. Yet in oral evidence he said that he was detained on this occasion for only two months. After the time that has passed, the appellant may be excused if he has become less than certain about the actual dates of his detention and escape. But if what the appellant has described did in fact occur, these would be truly memorable events about which it would be reasonable to expect the appellant to give a consistent account. He has not done so. In particular, it would be reasonable to expect the appellant to recall that his detention was for over four months, twice as long as his first experience of being detained, and not to say that it was only for two.
68. We do not find credible either the appellant’s account of his escape from the second detention. He said in evidence that, each and every night, he and the other detainees were required to stand outside the house in a walled area. The guards would not be present and, on the night of their escape, the appellant and his friend simply climbed over the wall and made their way to a main road where they flagged down a lorry.
69. There are a number of difficulties with this part of the appellant’s account. Firstly, we do not believe that persons considered to be of sufficient interest to be detained for over four months should be allowed to remain each night unguarded in the open

in an area from which they could escape by simply climbing over a wall. This is especially so as it is the appellant's account that these premises were designed specifically for the detention and ill-treatment of suspects.

70. Secondly, it is said that the objective evidence supports the claim that detainees would be required to stand out of doors while being held in detention. But that is not the case. Those reports are of detainees being made to stand outside during the day so that they would suffer from the sun as a form of torture. The appellant said in his first statement that he was required to stand outside at night "on occasions" but in his oral evidence at the reconsideration hearing he said that he was "always" instructed to stand outside at night and that it was "every day" that he was required to stand outside at night.

71. Further, the appellant said in oral evidence that their escape was not planned but happened on the spur of the moment. There was no doubt or ambiguity about his evidence at the hearing in this respect. We do not accept that, if circumstances had been as claimed, it would not have occurred to the appellant or his friend earlier that an escape might be possible while left unguarded each night. This, in any event, is in direct contradiction to what the appellant said in interview:

"There was another brother – actually it's a colleague and together we'd been planning the escape for a long time."

72. The appellant claimed not to know the location of his place of detention. But since he escaped from that place on foot and made his way to a main road where he waited until a lorry driver offered him a lift, it is difficult to understand why he was not able to discover from where he had been picked up by that lorry.

73. In any event, we do not believe the appellant's account of being offered a lift by a lorry driver, flagged down in the middle of the night by two dishevelled men, who unknown to him had just escaped from more than four months detention during which they were kept in poor conditions. The lorry driver might be expected to be aware that his journey to Port Sudan would take him through several checkpoints. It is difficult to understand why he would wish to take them on to his lorry with no money or identification. Mr Verney told us that it would not be unusual for a lorry driver to have casual labour to help him. But the appellant's account is that he was, of course, unknown to the lorry driver, there was no load on the vehicle and no arrangement for work in exchange for the journey was mentioned.

74. Mr Verney confirms that there would have been three or four checkpoints to have been passed through on the journey to Port Sudan. We do not find credible the appellant's account that he and his friend, who remained clearly visible on the back of the open lorry, were not asked at any of the check points to produce identification. Mr Verney said that, in most cases a person would be asked to produce identification. The background evidence indicates that failure to produce identification upon request could result in arrest. Mr Verney said that vigilance varied and it was not impossible that those operating checkpoints would have accepted that the appellant and his friend were assistants of the driver and not worthy of attention. That, we find, might well have been the case at any particular remotely located checkpoint operated by bored and unmotivated soldiers but it is

not reasonably likely that this would be the case at each checkpoint passed through. We reach these conclusions having taken into account the view expressed by Mr Verney that the appellant “might well” have been able to make his way to Port Sudan in the manner claimed.

75. Indeed, it is convenient to record at this point that we have, of course, made our findings in the light of all the evidence before us, including the view expressed by Mr Verney that he found the appellant’s account to be plausible and consistent with what he knew of the behaviour of the authorities in Sudan.
76. There are further difficulties about this part of the appellant’s account. This was not a fully laden lorry taking goods to Port Sudan. The appellant said it had a few bags or sacks on the back. In our view it is simply not credible that such a lorry, with two undocumented young men riding on the back, would not have excited sufficient interest at any of the checkpoints even to the extent of a search to discover what was contained within the sacks that were on the lorry. The appellant’s evidence at the hearing is that he did not know what was in these sacks and the soldiers at the checkpoints did not look inside them either.
77. The appellant has also given a contradictory and inconsistent account of his journey to the United Kingdom. In his first witness statement the appellant says, clearly and unambiguously, that on arrival in Port Sudan he sent a message to his father asking him to send money. His father provided him with money and “I then made the arrangements with an Eritrean smuggler” to gain access to the boat that took him to France. On arrival he met some Arab people in a coffee shop who advised him to go to Paris to meet a Sudanese man who then provided the appellant with the passport with which he travelled to the United Kingdom.
78. But his oral evidence was different. He said that his father did not send the funds to him but direct to the agent. His father sent some further money to him once he arrived in France. He made clear in his oral evidence that the travel package bought from the agent in Port Sudan brought him to London, which was always his intended destination.
79. This inconsistent account reinforces our conclusion that the appellant has not given a truthful account of fleeing Sudan after escaping from a second detention. Further, he has remained in contact with his father who, despite signing, on the appellant’s account, an undertaking for the appellant’s good behaviour when released after the first detention, has suffered no adverse attention from the security forces and continues to run his car sales business in Khartoum unhindered in any way.
80. We have found it convenient to discuss the appellant’s account about his experiences in Sudan in a chronological fashion. But we have, of course, assessed that account in the light of the evidence as a whole. In particular, throughout our assessment of the appellant’s account of his experiences in Sudan we have borne closely in mind the medical evidence provided by Dr Braverman and set out in a report which is undated but was prepared following an interview on 9th July 1999. In that report Dr Braverman sets out a detailed account taken from the appellant of the treatment to which he said he was subjected during two periods of detention. That

account is consistent with that given by the appellant throughout although given in considerably more detail than in other parts of his evidence.

81. In his report Dr Braverman describes the marks and scars found on examination of the appellant. A number of these are described as old abrasions but some are of particular relevance. On the appellant's left shoulder is a burn 6.5 x 4 cms and on his left forearm another 5.5 x 3 cms. On the appellant's right arm, just below the elbow, was found three further scars, two of which were described as burns of 2.5 cms and 4 cms x 1 cm respectively. On the tip the appellant's right shoulder are two almost identical burns measuring 6 cm x 3 cm.
82. Dr Braverman sets out his conclusions and opinion as follows:

"[The appellant] gives a very clear description of two episodes of torture: one in 1992, the other in 1995 and in particular he describes being burned with a metal rod and dragged across the floor. He is somewhat anxious and has feelings of being followed. He sleeps poorly and wakes up startled at night and frightened."

That much, of course, is no more than a recital of what the appellant told him and does not, in itself, take the matter much further other than to indicate consistency. But the doctor goes on to say, and this is the entirety of the expert opinion expressed:

"On examination he has multiple lesions, several of them obviously burns and especially the lesions on his knees could well be due to being dragged across a rough surface. His many lesions and their site very strongly corroborate his story."

83. We have given very careful consideration to the opinion expressed by Dr Braverman. He says that the lesions on the appellant's knees, described as "old abrasions" could well be due to the ill-treatment described by the appellant. That, of course, leaves open many other potential causes but it is his view, overall, that the lesions identified provide strong support for the appellant's account.
84. However, we must look at the evidence as a whole and having given due weight to Dr Braverman's opinion that the scars are corroborative of his account, we do not believe that the appellant's account of how those injuries were sustained is true or reasonably likely to be true. For the reasons we have set out, we do not accept that the appellant has involved himself in any form of political activity on behalf of the SCP in Sudan. We are satisfied that he has never been involved in the distribution of leaflets and that his account of being arrested and detained on two occasions because of being suspected of any such activities is untrue. We find that the likelihood is that the appellant had been unable to gain admission to university or permission to study abroad simply because he did not wish to perform his national service and that his departure from Sudan was planned so that he could pursue other opportunities abroad. He said in oral evidence that he did not have a job in Sudan, although he "sometimes" helped his father. He described himself as a student in Sudan although he confirmed in oral evidence that he had completed school in 1987 some years before his departure. We are not satisfied that there is any reasonable degree of likelihood that the appellant fled from Sudan to escape the adverse attention of the authorities.

85. In summary we do not believe the appellant's account of how he sustained the injuries described in the medical report. Whether or not that explains the absence of any evidence from the hospital where he was treated, we simply do not know but the burden of proof remains upon the appellant throughout to establish the facts upon which he seeks to rely. He has put before us an account which we find to be untrue. It is a regrettable fact that criminal or unlawful harm can be inflicted upon individuals for a variety of reasons. Whatever were the true circumstances in which the appellant sustained his injuries, he has not put them forward.
86. In reaching our conclusions we have had regard, as required, to the provisions of section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. In determining whether to believe a statement made by the appellant we are to take account, as damaging the appellant's credibility, of any behaviour to which that section applies. The appellant chose not to take advantage of a reasonable opportunity to claim asylum in France and he provided a false passport upon entering the United Kingdom. That is behaviour falling within the section which we are required to take into account as damaging the appellant's credibility. But the extent to which this behaviour damages his credibility is, of course, a matter for us. The appellant has given an explanation for his behaviour but we have not found it to be satisfactory. In any event our findings on his credibility would have been the same regardless of these provisions.
87. Mr Verney said that the fact that the appellant had been away from Sudan for a number of years would in itself attract the attention on return. But even if that length of absence was noted, we cannot see that anything would arise from it absent any other reason to excite interest. There is no adequate evidence before us to show that the fact of a lengthy absence from Sudan in itself gives rise to a real risk on return.
88. We find that the appellant faces no real risk of facing on return to Sudan persecution for a reason recognised by the Refugee Convention. He has not shown substantial grounds for believing that he faces serious harm as defined in paragraph 339C of HC 395 nor is there any real risk that he will be subjected to ill-treatment such as to infringe his rights under the Human Rights Convention.

Decision

89. The original tribunal erred in law. We substitute a decision dismissing the appeal on asylum, humanitarian protection and human rights grounds.

Signed

Date: 7 May 2008

Senior Immigration Judge Latter

Schedule

Country background information

Undated	International Correspondence on Ideas about the Future of Socialism from www.ospaal.org
Undated	Major Sudanese Political Parties from www.sudan.net
28 July 1971	Washington Post Communist Party Leader Sentenced by Military Court
1996	United States State Department Report Sudan January 1996
June 1999	A Peaceful Democratic Solution from www.midan.net
1 July 2000	UNHCR Background Paper on Refugees and Asylum Seekers from the Sudan
9 April 2001	Report on Fact Finding Mission to Cairo and Geneva Danish Immigration Service
1 December 2001	Danish Immigration Service Report on Fact Finding Mission to Cairo
28 March 2003	OHCHR Statement on the Situation of Human Rights in Sudan
8 December 2003	UNHCR Report: More Sudanese Flee into Chad
28 July 2004	Extract from Al Midan SCP Newspaper
15 September 2004	US Department of State International Religious Freedom Report 2004
27 January 2005	UN Press Release: Calls on Sudan to End Impunity
7 April 2005	Sudan Human Rights Violations Condemned, Political Affairs Magazine
8 April 2005	Internet article from Sudan Tribune: Sudan Communist Leader Re-emerges after Decade in Hiding
1 December 2005	Tenth European COI Seminar Paper on Sudan
2006	Excerpt from Annual Report of the Observatory for the Protection of Human Rights
March 2006	Extract from Human Rights Watch Report

7 March 2006	Internet article in Sudan Tribune: Sudan's NDA Condemns Religious Decrees Targeting Communist Party
8 March 2006	US State Department Country Report on Human Rights Practices 2005
23 May 2006	Amnesty International Report 2006
6 September 2006	Freedom House Report Worst of the Worst: The World's Most Repressive Societies
28 September 2006	Internet article Sudan Tribune Sudan Communist Party to Re-issue Al Midan Newspaper
26 June 2006	News Archive Detention and Torture of Political Activists SOAT
6 September 2006	Human Rights Alert
15 December 2006	Africa Confidential
18 January 2007	Kerry Williams: Sudan Communists Discuss Prospects for Peace
6 February 2007	Commentary: Sudan The Doomsday Cult
March 2007	US State Department Report Sudan
20 March 2007	Sudan Tribute Fatima Ahmed Retires from SCP in Parliament
11 March 2007	Sudan Report US Administration Extends Protected Status for Sudanese
23 March 2007	Amnesty International Report 2007
2 May 2007	BBC Report: ICC Issue Darfur Arrest Warrants
10 May 2007	SOAT: Arrest of Political Activists
5 June 2007	Operational Guidance Note on Sudan
20 June 2007	Internet article Sudan Tribune Sudanese Communist Leader Urges Government to Admit Darfur Crimes
22 June 2007	Africa Confidential
5 July 2007	Internet article from International Institute for Democracy and Electoral Assistance
12 August 2007	Internet article from Sudan Tribune: Opposition Communists Urged to Convince Rebel Leaders to Join Darfur Process

24 August 2007	Africa Confidential
3 August 2004	Tony Busselen: The Crisis in Darfur, Toward a War Against Sudan?
28 August 2007	Internet article Reuters Sudan Confiscates 15,000 Copies of Opposition Paper
5 November 2007	News article Ben Russell Sudanese Officials Were Allowed to Interview Darfuri Refugees in UK
20 December 2007	Inset article Sudan Tribune Sudan Communist Party, Ruling NCP Discuss Democratic Transition
11 January 2008	Africa Confidential
31 January 2008	UN Report of Security Council on Sudan
5 February 2008	Newspaper reports collated by FCO updating reports of 10 January 2008 and 2 August 2007
14 February 2008	Covering letter and Parliament Report from FCO
14 February 2008	Sudan Tribune Sudan Parties Close to Election Deal
17 February 2008	Sudan Tribune: Sudan Vice-President Urges Political Consensus on Major Issues